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COMMITTEE ON THE PEACEFUL
USES OF OUTER SPACE

QUESTIONNAIRE ON POSSIBLE LEGAL ISSUES WITH REGARD TO AEROSPACE OBJECTS: REPLIES FROM MEMBER STATES

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INTRODUCTION

1. At its thirty-eighth session, the Committee on the Peaceful Uses of Outer Space noted that, at the thirty-fourth session of the Legal Subcommittee, the Working Group of the Subcommittee on agenda item 4, on matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, had finalized the text of a questionnaire on possible legal issues with regard to aerospace objects. The Committee agreed with the Legal Subcommittee (A/AC.105/607 and Corr.1, para. 38) that the purpose of the questionnaire was to seek the preliminary views of States members of the Committee on various issues relating to aerospace objects. The Committee also agreed that the replies to the questionnaire could provide a basis for the Legal Subcommittee to decide how it might continue its consideration of agenda item 4. The Committee further agreed with the Subcommittee that States members of the Committee should be invited to give their opinions on those matters.[1]

2. The Secretary-General sent a note verbale dated 21 August 1995 to all States members of the Committee on the Peaceful Uses of Outer Space inviting them to communicate to the Secretariat the above-mentioned information so that the Secretariat could prepare a report containing that information for submission to the Legal Subcommittee at its thirty-fifth session.

3. Information received from Member States by 15 February 1996 is contained in document A/AC.105/635. Information received between 16 February and 15 March 1996 is contained in document A/AC.105/635/Add.1.

4. The present document was prepared by the Secretariat on the basis of information received from Member States between 16 and 18 March 1996.

REPLIES RECEIVED FROM MEMBER STATES: ITALY

Question 1: Can an aerospace object be defined as an object which is capable both of travelling through outer space and of using its aerodynamic properties to remain in airspace for a certain period of time?

Concerning the definition of an aerospace object, while we agree generally with question 1, which considers the twofold capacity to "travel" and to "fly into orbit" as a specific characteristic of the aerospace object, we nevertheless admit that this interpretation is closely linked with the developing technology, and therefore we advise, in view of a possible legal definition consistent with the technological evolution, to thoroughly examine the "aerospace object" requisites.

Question 2: Does the regime applicable to the flight of aerospace objects differ according to whether it is located in airspace or outer space?

Following the Government's opinion, and on the basis of present technical results, the so-called "aerospace object" is conceived as and destined to a unitary function, meant for activities in outer space. The operational circumstance of crossing the Earth's atmosphere does not affect the mission's singleness under a unified regime.

Question 3: Are there special procedures for aerospace objects, considering the diversity of their functional characteristics, the aerodynamic properties and space technologies used, and their design features, or should a single or unified regime be developed for such objects?

Following the Government's opinion, and consistent with the unitary solution proposed at point 2, this point lacks juridical value and should be reformulated.

Question 4: Are aerospace objects while in airspace considered as aircraft, and while in outer space as spacecraft, with all the legal consequences that follow therefrom, or does either air law or space law prevail during the flight of an aerospace craft, depending on the destination of such a flight?

Following the Government's opinion, and consistent with the unitary solution proposed at point 2, this point lacks juridical value and should be reformulated.

Question 5: Are the take-off and landing phases specially distinguished in the regime for an aerospace object as involving a different degree of regulation from entry into airspace from outer space orbit and subsequent return to that orbit?

Following the Government's opinion, and consistent with the unitary solution proposed at point 2, this point lacks juridical value and should be reformulated.

Question 6: Are the norms of national and international air law applicable to an aerospace object of one State while it is in the airspace of another State?

Keeping particularly into account the phase of re-entry into airspace and the relevant flight activities of the "aerospace object", while observing the unified character of the above mission which prevents a positive answer to question 6, it is advisable to examine such flight activity with respect to the existing rules of air navigation in order to solve possible interferences.

Question 7: Are there precedents with respect to the passage of aerospace objects after re-entry into the Earth's atmosphere and does international customary law exist with respect to such passage?

Following the Italian Government's opinion, the issue should be re-examined keeping into account solutions mentioned at points 2 and 6.

Question 8: Are there any national and/or international legal norms with respect to the passage of space objects after re-entry into the Earth's atmosphere?

Following the Italian Government's opinion, the issue should be re-examined keeping into account solutions mentioned at points 2 and 6.

Question 9: Are the rules concerning the registration of objects launched into outer space applicable to aerospace objects ?

As far as the registration of the object is concerned, although in our opinion objectives and aims provided by the existing international Convention are not fully applicable to the aerospace object, it is advisable to thoroughly examine the matter in order to check the need or opportunity for a "registration", also keeping into account the shortness of the "orbiting phase" generally attributed to the aerospace object.

Notes

[1] See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/50/20), para. 117.